

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to electronic visit verification and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 73, “Managed Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 249A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 249A.

Purpose and Summary

Electronic visit verification (EVV) is a federal requirement for states to implement. In December 2016, the 21st Century Cures Act was signed into law. Section 12006 of the Act requires EVV for personal care services beginning January 1, 2020, and for home health services beginning January 1, 2023. Iowa was granted a one-year good-faith exemption, so the requirement for Iowa is January 1, 2021, for personal care services and January 1, 2023, for home health services. The Department is using a managed care implementation model for EVV.

EVV uses technology to electronically record when attendants begin and end providing services to Medicaid members. EVV will be used to ensure members are receiving the care they need that is outlined in the members’ service plan. EVV will be used to monitor the delivery and utilization of personal care and home health services in nontraditional settings and will provide verification of the visit with location information and a time stamp. EVV will be used to ensure quality and program integrity. It also streamlines billing for providers. Once a visit is complete, the claim is sent to the managed care organization (MCO) for payment.

EVV was implemented January 1, 2021, in accordance with federal regulations. Payments were made outside of the system in January to allow providers to start using the system and become familiar with its applications. Providers will need to be using the system by February 1, 2021. These proposed amendments provide additional guidance for providers.

Beginning January 1, 2021, personal care service providers including consumer-directed attendant care (CDAC) providers, homemaker providers, and consumer choice option employees that provide personal care services are required to use EVV. The Department has extended the deadline for assisted living and residential care facilities to July 1, 2021. The EVV implementation for the fee-for-service (FFS) population will be deployed in a second phase for compliance.

Fiscal Impact

EVV implementation for personal care services will be completed via the MCO, and the approved contracted vendor will be in compliance with the mandate for the MCO population. Allowing payments outside of the EVV system during January 2021 will incur a noncompliance penalty to be applied to the MCO and FFS personal care services. This cost is estimated at \$57,648 for the first calendar quarter of 2021. Additional FFS noncompliance penalty fees are estimated at \$5,000 in SFY21 and \$15,000 in SFY22. There could potentially be an additional penalty fee of approximately \$10,000 for the first six months of SFY23. The expectation is that FFS personal care will be implemented in the second phase when home health is implemented in January 2023. The Department expects to incur costs in SFY22

as it prepares for the January 2023 implementation. These development costs are currently estimated at \$2,040,000 and are expected to be reimbursed at a 90 percent federal match rate. There may also be development costs in SFY23, but the amount is not yet known. Estimates were based on market research. Estimates for the noncompliance costs for personal care services associated with the Federal Medical Assistance Percentages (FMAP) reduction in CY21 through CY23 were based on the FFS population currently receiving personal care services.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 2, 2021. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—73.1(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 2. Amend subrule 73.18(2) as follows:

73.18(2) Content of individual treatment record. The managed care organization shall ensure that participating providers maintain an adequate record-keeping system that includes a complete medical or service record for each enrolled member including documentation of all services provided to each enrollee in compliance with the contract and provisions of rule 441—79.3(249A) and pursuant to federal funding requirements, including 42 CFR 456 as amended to October 16, 2015. Beginning January 1, 2021, the managed care organization shall require use of an electronic visit verification system for personal care services.

ITEM 3. Amend paragraph **78.34(7)“c”** as follows:

c. Service documentation. The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 4. Amend subparagraph **78.34(13)“m”(4)** as follows:

(4) ~~Employees~~ For personal care services, employees shall use an electronic visit verification system that captures all documentation requirements of the Consumer Choices Option Semi-Monthly Time Sheet (Form 470-4429) or use Form 470-4429. All other employees shall complete, sign and date Form 470-4429, Consumer Choices Option Semi-Monthly Time Sheet, for each date of service provided to a member. Documentation shall comport ~~All employees shall maintain documentation that complies with 441—subparagraph 79.3(2)“e”(3), “Service documentation.” rule 441—79.3(249A).~~

ITEM 5. Amend paragraph **78.37(15)“c”** as follows:

c. Service documentation. The consumer-directed attendant care individual and agency providers ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). Assisted living facilities may choose to use Form 470-4389 or may devise another system that adheres to the requirements of rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 6. Amend paragraph **78.38(8)“c”** as follows:

c. Service documentation. The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 7. Amend paragraph **78.41(8)“c”** as follows:

c. Service documentation. The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system

that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 8. Amend paragraph **78.43(13)“c”** as follows:

c. Service documentation. The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 9. Amend paragraph **78.46(1)“c”** as follows:

c. Service documentation. The consumer-directed attendant care provider ~~must complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service~~ shall document evidence of compliance with the requirements of this chapter and rule 441—79.3(249A). The documentation or copies of the documentation must be maintained or be electronically accessible by the consumer-directed attendant care provider. Providers must use an electronic visit verification system that captures all documentation requirements of the Consumer-Directed Attendant Care (CDAC) Service Record (Form 470-4389) or use Form 470-4389. Any service component that is not documented in accordance with rule 441—79.3(249A) shall not be payable.

ITEM 10. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.1(249A)**:

“Electronic visit verification system” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 11. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.21(249A)**:

“Electronic visit verification system” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 12. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.41(249A)**:

“Electronic visit verification system” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 13. Adopt the following **new** definition of “Electronic visit verification system” in rule **441—83.60(249A)**:

“Electronic visit verification system” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 14. Adopt the following new definition of “Electronic visit verification system” in rule **441—83.81(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 15. Adopt the following new definition of “Electronic visit verification system” in rule **441—83.101(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.

ITEM 16. Adopt the following new definition of “Electronic visit verification system” in rule **441—83.121(249A)**:

“*Electronic visit verification system*” means, with respect to personal care services or home health care services defined in Section 12006 of the 21st Century Cures Act, a system under which visits conducted as part of such services are electronically verified with respect to: (1) the type of service performed, (2) the individual receiving the service, (3) the date of the service, (4) the location of service delivery, (5) the individual providing the service, and (6) the time the service begins and ends.